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**Date:** October 5, 2004

**To:** Examiner Gregory Wilson, Group Art Unit 3749

**Company:** U.S. Patent and Trademark Office

**Fax No.:** (703)-872-9306

**From:** Edward A. Boeschstein, Esq.

**No. of Pages, Including Cover:** 7

**Re:** U.S. Patent Application Serial No. 10/677,443

Applicant: Joseph E. Schroeder

Filed: October 2, 2003

Entitled: ONCE-THROUGH EVAPORATOR FOR A STEAM GENERATOR

Attorney's Docket No. NOOT 8500U1

**Comments:** Please see attached.

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Appl. No. 10/677,443  
Petition to Withdraw Holding of Abandonment/October 5, 2004

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Appl. No.	:	10/677,443
Applicant	:	Joseph E. Schroeder
Filed	:	10/02/2003
Title	:	ONCE-THROUGH EVAPORATOR FOR A STEAM GENERATOR
TC/A.U.	:	3749
Examiner	:	Gregory Wilson
Conf. No.	:	
Docket No.	:	NOOT 8500U1

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

#### PETITION TO WITHDRAW HOLDING OF ABANDONMENT

Applicant, pursuant to 37 CFR 1.181 and MPEP 711.03(c)(I), hereby petitions the Director of Patents to withdraw a holding of abandonment in the above-designated application.

Briefly, the Patent Office examiner to whom the application is assigned on September 30, 2004, called the undersigned attorney and inquired if the applicant had intended to allow the application to lapse into abandonment for failure to respond to an office action. The undersigned attorney stated that he was unaware of the office action and checked the file and computer records to see if the office action had been recorded against the application. No trace of an office action appeared, and the examiner was so

I hereby certify that this correspondence is being forwarded by facsimile transmission to Examiner Gregory Wilson, U.S. Patent and Trademark Office at (703)-872-9306 on October 5, 2004.

  
Edward A. Boeschstein, Reg. No. 22,986

10-5-04  
Date of Signature

Appl. No. 10/677,443

Petition to Withdraw Holding of Abandonment/October 5, 2004

informed. The examiner referred the undersigned attorney to MPEP 711.03(c) and suggested proceeding in accordance with the guidelines set forth in it. Accordingly, applicant submits the petition – Indeed, directly to the examiner as he requested.

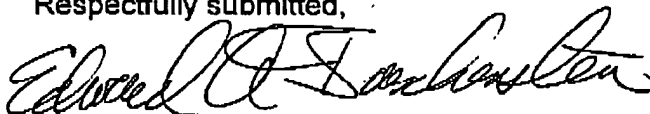
The Declaration of Edward A. Boeschenstein submitted herewith recites the facts in more detail and provides the evidence required by MPEP 711.03(c)(I)(A).

Interestingly enough, on June 17, 2004, applicant submitted a Supplemental Information Disclosure Statement, and one of the justifications for submitting it without a fee was that it was submitted before the first action on the merits.

According to MEPEP 711.03(c)(I)(A), this petition does not require a fee. However, if indeed one is necessary, the Patent Office is authorized to charge it against Deposit Account No. 162201. Also, having never received the office action, applicant is not at this juncture in a position to respond to it.

Favorable consideration of this petition and dispatch of the office action are respectfully requested.

Respectfully submitted,



Edward A. Boeschenstein  
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### DECLARATION OF EDWARD A. BOESCHENSTEIN

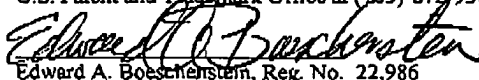
Edward A. Boeschenstein declares as follows:

1. I am an attorney registered to practice before the United States Patent and Trademark Office in connection with the prosecution of patent applications. I practice law with the law firm of Polster, Lieder, Woodruff & Lucchesi in St. Louis, Missouri, having been a partner in that firm at all times relevant to the matters discussed in this declaration.

2. On October 4, 2002, I filed on behalf of Joseph E. Schroeder and his employer, Nooter/Eriksen, Inc., U.S. provisional patent application 60/416,083 for a "Once-Through Evaporator with Twisted Tape Inserts". Later I prepared and filed the above-designated nonprovisional application which derives priority from the provisional application, having dispatched that nonprovisional application to the U.S. Patent Office by Express Mail on October 2, 2003.

On September 30, 2004, Examiner Gregory Wilson contacted me by telephone and inquired if I had intended to allow the application to lapse into abandonment. Having not recalled any instructions from Nooter/Eriksen to

I hereby certify that this correspondence is being forwarded by facsimile transmission to Examiner Gregory Wilson, U.S. Patent and Trademark Office at (703)-872-9306 on October 5, 2004.

 10-5-04  
Edward A. Boeschenstein, Reg. No. 22,986 Date of Signature

U.S. Patent Application No. 10/677,443  
DECLARATION OF EDWARD A. BOESCHENSTEIN

abandon any of their applications, I expressed surprise. I promised to investigate the matter.

4. I reviewed the file for the application, the file for the provisional application, and the file for the corresponding PCT application and could find no office action or any reference of one. I further checked the computer records maintained by the law firm and still could not find any reference to an outstanding office action.

5. I addressed the matter to Christine Schill, a paralegal employed by the firm to handle matters concerning patents, and asked her if she could locate any reference to an office action in the computer records of the firm. She could not, but using the private PAIR system maintained by the Patent Office she discovered that the Patent Office had issued an office action on March 29, 2003.

6. If the firm had received the office action and if the office action required a three-month response, June 29, 2003, would have been entered into the computer records of the firm as the date for responding to the office action without a surcharge. A computer docket report showing all patent-related matters in the firm that required attention on June 29, 2004, is attached hereto as an exhibit. It bears no entry relating to the application on June 29, 2004.

7. Ordinarily the firm does not request status reports on applications that have remained pending for less than a year.

8. All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true. These statements were made with the knowledge that willful false statements and the

U.S. Patent Application No. 10/677,443  
DECLARATION OF EDWARD A. BOESCHENSTEIN

like so made are punishable by fine or imprisonment, or both under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

  
Edward A. Boeschenstein

Date: October 5, 2004  
St. Louis, Missouri

Docket Date	Actual Due Date	Atty	Matter	Description
06/26/2004	06/26/2004	AKA/NWR	DN 8708	COOK 10/607355 - application status check
<del>03/27/2004</del>	<del>06/27/2004</del>	<del>NWR/TKA</del>	<del>DN 8691</del>	<del>SCME 60/483408 - one-year deadline to file utility application</del>
06/27/2004	06/27/2004	EAB/WGB	DN 8263	TMK PCT/US03/09845 - invitation to restrict of pay additional fees
06/28/2004	06/28/2004	WGB	DN 8596U1	CONJ 10/810374 - information disclosure statement
<del>03/29/2004</del>	<del>06/29/2004</del>	<del>NWR/TKA</del>	<del>DN 8017</del>	<del>USCC PCT/US03/40050 - completion of net filing due (by 6/29/04)</del>
<del>03/29/2004</del>	<del>06/29/2004</del>	<del>JJM</del>	<del>DN 8521</del>	<del>GHPO 10/306193 - response to Office Action dtd 3/29/04 Due (by 6/29/04)</del>
06/30/2004	06/30/2004	EAB	DN 8899	NOOT60/557626 - filing receipt follow up
06/30/2004	06/30/2004	NDN	DN 8438	TTEP 10/273197 - amendment due
03/30/2004	06/30/2004	AKA/NWR	DN 8898	PARA 60/557625 - filing receipt follow-up
03/30/2004	06/30/2004	JJM	DN 7842	GEHA 09/848024 - amendment due
03/31/2004	06/30/2004	<u>NWR/NDN</u>	DN 8652	RAUC 10/664231 - response to Office Action dtd 3/31/04 Due (by 6/30/04)
04/01/2004	07/01/2004	MEB	DN 7812	TCJC 09/773803 - response to Office Action dtd 4/1/04 Due (by 7/1/04)

No per JJM

RCVD  
ANOTHER  
06/18

7

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